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LONG ISLAND OFFICE

1 UNITED STATES DISTRICT COURT
2 EASTERN DISTRICT OF NEW YORK
3 CENTRAL ISLIP

4 -----X

5 UNITED STATES OF AMERICA,

6 - against -

7 ALAN DRESNER,

8 Defendant.

INFORMATION

Cr. No. _____
(T. 18, U.S.C., §§ 1343, 2, and
3551 *et seq.*)

CR 14 225

9 -----X

10 THE ASSISTANT ATTORNEY GENERAL OF THE ENVIRONMENT
11 AND NATURAL RESOURCES DIVISION OF THE UNITED STATES
12 DEPARTMENT OF JUSTICE CHARGES:

SPATT, J.

WALL, M.J.

13 At all times material to this Bill of Information, and incorporated by reference in all counts:

14 A. The Defendant

15 1. The defendant, ALAN DRESNER ("DRESNER"), was a resident of Brooklyn, New
16 York. DRESNER was a federally-permitted fish dealer, which meant that he could purchase
17 seafood directly from federally-permitted fishing vessels without going through an intermediary.
18 The charge in this case stems from DRESNER's purchases of seafood from Anthony Joseph
19 ("Joseph"), who captained a federally-permitted fishing vessel, *F/V Stirs One* ("Stirs One").
20 DRESNER's purchases took place at the Point Lookout, New York, waterfront, where the *Stirs*
21 *One* offloaded its catch. DRESNER is "Fish Dealer X", as that person is referred to in the
22 related case of *U.S. v. Anthony Joseph*, Case No. 2:14-cr-00201-SJF (E.D.N.Y.).
23

24 B. Legal Framework

25 2. The commercial fishing industry is highly regulated by both state and federal
26 authorities. Operators of fishing vessels must comply with restrictions such as closed areas,
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1 seasonal access, gear restrictions, and limits on the quantity or weight of fish caught, *e.g.*, quotas.
2 In order to ensure a sustainable fishery for a particular species, such as fluke (also known as
3 summer flounder), the National Oceanic and Atmospheric Administration ("NOAA"), in
4 fulfilling its mandates under the Magnuson-Stevens Fishery Conservation and Management Act
5 ("Magnuson-Stevens"), 16 U.S.C. § 1801 *et seq.*, allocates certain catch shares to states within a
6 predetermined region. For instance, New York is part of the Northeast Region for share
7 allocation of fluke. *See* 50 C.F.R. § 648.102(c)(1) (New York allocated 7.64699% of annual
8 commercial summer flounder quota in the Northeast Region).
9

10
11 3. Once the New York catch share is established by federal authorities, New York
12 establishes its own quota system for commercial fishing vessels that are based out of New York
13 ports. For the principal species at issue in this matter, fluke, New York sets a daily trip limit on
14 regulated vessels. This means that a fishing vessel is confined to a hard limit of a certain weight
15 of fluke per day. New York has the option of changing its daily trip limit throughout the course
16 of the year as long as, at the end of the year, the total catch for all of its vessels does not exceed
17 the allocation from the federal government. This is why one encounters some variance in the
18 New York daily trip limit. For example, in the years 2010 and 2011, the New York daily trip
19 limit for fluke typically varied between 70 and 210 pounds.
20

21
22 4. It is difficult for fisheries managers to directly observe what fishers are doing out on
23 the water, and as such, fishing vessels are required to comply with various reporting
24 requirements. One such requirement is that vessels must complete a Fishing Vessel Trip Report
25 ("FVTR") at the end of each trip. 50 C.F.R. § 648.7(b)(1)(i). The FVTR requires not only
26 general information such as date, vessel name, permit number, and Coast Guard document
27 number, but also detailed catch data such as gear used, species caught, species weight, number of
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1 hauls, port of landing, and if available, identity of the fish purchaser(s) (dealers). For the *Stirs*
2 *One*, which held a Northeast multispecies permit, FVTRs were required to be mailed to a NOAA
3 office in Massachusetts on a weekly basis. 50 C.F.R. § 648.7(f)(2).
4

5 5. A fishing vessel located in New York that was targeting fluke was therefore limited to
6 the daily maximum catch set by the daily trip limit. However, NOAA provided an alternative
7 pathway for a fishing vessel to increase its overall annual catch by participating in a program
8 called the Research Set-Aside Program, or "RSA" Program. NOAA, in collaboration with the
9 New England and Mid-Atlantic Fishery Management Councils and the Atlantic States Marine
10 Fisheries Commission, established the RSA Program as a method to provide additional revenue
11 for fisheries research. With fluke, there was a "pie" of quota that was set for the year for the
12 states in the Northeast Region. Ninety-seven percent of that pie was allocated to the states for
13 their quota systems, but three percent was auctioned off, and the funds generated from the RSA
14 auction were designated for fisheries research grants.
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17 6. Through the RSA Program, a fishing vessel had the opportunity to bid on additional
18 quota of fluke. Assuming the vessel submitted a successful bid, the vessel would receive a set
19 amount of additional quota that it could use throughout the calendar year in any way the operator
20 saw fit. For example, if a vessel purchased an extra 10,000 pounds of quota, it could have one
21 very lucky day and expend the entire RSA quota, or it could use some of the quota in bits and
22 pieces throughout the year.
23

24 7. The presence of a lump sum of quota, in contrast to a relatively modest daily trip limit,
25 provided an opportunity for the unscrupulous operator to manipulate the system. The
26 opportunity to manipulate the RSA Program is as follows: governmental resources available to
27 do actual boardings and dockside inspections are finite and limited. Nevertheless, there is
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1 always some risk of government inspection. If a vessel with no RSA quota returned to the dock
2 with a catch that exceeded its daily trip limit, the vessel risked exposure because the trip limit
3 number is a hard cap. In other words, an operator (with no spare RSA quota) that is found to be
4 over the daily cap is instantly in violation. Compare the example of the summer flounder fisher
5 that is operating under the daily trip limit system, but who also purchased a large share of RSA
6 quota, *e.g.*, 10,000 pounds. If that vessel is randomly boarded or inspected and found with a
7 catch amount over the daily trip limit, the operator could simply declare that the excess is
8 coming from the RSA quota. For an honest operator, this is not a problem, but the ability exists
9 for a dishonest fisher to regularly underreport his catch so that it seems consistent with the daily
10 trip limits, unless and until it appears that fisheries authorities are about to ascertain the true
11 nature of the catch. Once an inspection or boarding appears likely, then the unscrupulous fisher
12 could adjust the FVTR to reflect the actual catch - daily trip limit and RSA - for that day. To be
13 sure, the RSA quota is reduced somewhat for the remainder of the year, but due to resource
14 constraints, in all likelihood another inspection would not happen for some time; thus, the
15 underreporting could continue throughout the fishing season. Put another way, the RSA
16 Program provided criminal operators with a mask for their illegal conduct regarding state fluke
17 quotas.

21
22 8. Participants in the RSA Program were required to declare on their FVTRs what
23 portion of their catch was allocated to the daily trip limit, and after that was exceeded, what
24 portion was allocated to their RSA quota.

25 9. Federally-permitted fishing vessels, such as those with a federal summer flounder
26 permit or a multispecies permit, *e.g.*, *Stirs One*, must only sell their catch to a federal fish dealer.
27 50 C.F.R. § 648.14(c).
28

1 10. NOAA requires that fish dealers submit weekly, electronic reports detailing
2 information about the fish purchased. In order to submit the reports, the dealer must log onto a
3 NOAA website using a username and password. 50 C.F.R. § 648.7(a)(1), 648.7(f). The website
4 is maintained by a NOAA contractor, and the contractor forwards the dealer information to
5 NOAA through a website that is available to designated NOAA components. NOAA is able to
6 generate reports from the dealer website.
7

8 11. Species that dealers must provide information about include summer flounder, squid,
9 black sea bass, scup, hake, and bluefish. The dealer reports include information such as date of
10 landing, port of landing, catch vessel, corresponding FVTR numbers, commercial grade, species,
11 price, and weight. NOAA utilizes the dealer reports as a check on the information submitted in
12 FVTRs, as well as a source of information used in fisheries management. For example,
13 according to the 2010 dealer permit application, "The purpose and use of permits is to (1)
14 register fish dealers and processor[s], (2) list the characteristics of dealer/processor operations,
15 (3) exercise influence over compliance (e.g. withhold issuance pending collection of unpaid
16 penalties), (4) provide a mailing list for the dissemination of important information to the
17 industry, (5) provide a universe for data collection samples, and (6) *obtain first purchase*
18 *information on landings to evaluate the biological, economic and social implications of*
19 *management measures.*" (emphasis added). Furthermore, "[a]ny record, as defined in § 648.2
20 [(includes dealer reports)], related to fish possessed, received, or purchased by a dealer that is
21 required to be reported, must be retained and made available for immediate review for a total of
22 3 years after the date the fish were first possessed, received, or purchased. Dealers must retain
23 the required records and reports at their principal place of business." 50 C.F.R. § 648.7(e)(1).
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1 12. Because the dealer reports identify the catch vessel and corresponding FVTR, in
2 theory, a mismatch between the dealer report and the FVTR is evidence of a mistake or some
3 fraudulent conduct. Therefore, in order to perpetuate an ongoing fraud, there needs to be some
4 level of collusion between vessel operator and dealer, lest a fisheries regulator discover the
5 error(s) and take corrective or enforcement action.
6

7 13. Pursuant to Magnuson-Stevens, NOAA has a property interest in "any fish (or the
8 fair market value thereof) taken or retained, in any manner, in connection with or as a result of
9 the commission of any act prohibited by [a Magnuson-Stevens regulation]." 16 U.S.C. §
10 1860(a). Magnuson-Stevens regulations make it unlawful for any person to "[m]ake any false
11 statement or provide any false information on, or in connection with, an application, declaration,
12 record or report under this part [Magnuson-Stevens regulations]." 50 C.F.R. § 648.14(a)(5); *see*
13 *also* 50 C.F.R. §§ 600.725(l), 648.14(a)(6); *U.S. v. Bengis*, 631 F.3d 33, 38-40 (2nd Cir. 2011)
14 (governmental entity has a property interest in seafood that was subject to forfeiture and sale
15 under fisheries regulations).
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18 C. Charged Count

19 COUNT ONE - Wire Fraud

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21 14. **Fraudulent Scheme:** During the years 2009 - 2011, DRESNER, as a federal fish
22 dealer, purchased fluke from the *Stirs One*. During those years, DRESNER knew that the
23 vessel's captain, Anthony Joseph, was knowingly and unlawfully harvesting fluke and was also
24 failing to report the fluke on the *Stirs One*'s FVTRs. In order to conceal and cover up the *Stirs*
25 *One*'s illegal harvest of fluke and to enable DRESNER to continue to purchase the unreported
26 fluke, DRESNER, knowingly schemed and planned to file false dealer reports with NOAA.
27 DRESNER knowingly coordinated his false dealer reports with the false FVTRs that were
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1 prepared and submitted by Joseph. The scheme included Joseph providing DRESNER catch
2 information via packing slips, notations, and oral statements. This catch information was passed
3 on during or shortly after offloading operations in Point Lookout, New York. Accordingly,
4 DRESNER filed false federal dealer reports that represented that the fish purchased from the
5 *Stirs One* matched what was reported by Joseph as caught on the *Stirs One*. However, the catch
6 weights, fish species, and price paid that DRESNER submitted to NOAA on these dealer reports
7 were false. To further conceal the scheme, DRESNER and Joseph agreed that DRESNER would
8 pay for reported fish with a check made out to the company that owned the *Stirs One*, while
9 DRESNER would pay Joseph directly for the unreported fluke in cash. During the course of the
10 scheme, from July 28, 2009, through December 15, 2011, DRESNER transmitted at least 120
11 separate, false dealer reports. NOAA had the legal right to seize and sell fish that was
12 unreported on federal dealer reports.

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15 15. On or about July 28, 2009, through December 15, 2011, within the Eastern District
16 of New York, the defendant,

17
18 ALAN DRESNER,

19 did knowingly and intentionally devise a scheme and artifice to defraud NOAA of fish and the
20 fair market value thereof (to wit: 246,376 pounds of summer flounder (fluke) valued at
21 \$510,000), and to obtain money and property from NOAA by means of materially false and
22 fraudulent pretenses and representations (to wit: that the fish represented as caught on Federal
23 Vessel Trip Reports and as purchased on federal dealer reports were of a certain species,
24 quantity, and weight, when in fact, the fish were not as represented on federal forms, and in fact
25 were in excess of New York State daily trip limits and/or RSA fluke quotas), and for the purpose
26 of executing such scheme and artifice, transmit and cause to be transmitted writings, signs, and
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1 signals by means of wire communication in interstate commerce (to wit: the internet submission
2 and transmission of at least 120 federal fisheries dealer reports from DRESNER's computer in
3 Brooklyn, New York, to NOAA's Regional Fisheries Management Office in Gloucester,
4 Massachusetts).

5
6 All in violation of Title 18, United States Code, Sections 1343, 2, and 3551 *et seq.*

7
8 ROBERT G. DREHER
9 ACTING ASSISTANT ATTORNEY
10 GENERAL OF THE ENVIRONMENT
11 AND NATURAL RESOURCES DIVISION
12 U.S. DEPARTMENT OF JUSTICE

13
14 Dated: April 16, 2014

15
16 By: 

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